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BY ECF

Hon. Carol B. Amon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Matthew Rinaldo
11 Cr 783 (CBA)

Dear Chief Judge Amon:

This will serve as a brief supplement to my prior submission to Your Honor, dated December 8, 2011. The adjournment of the bail hearing scheduled before Your Honor from December 12th to December 15th has given me the opportunity to review additional prisons calls made by Mr. Rinaldo, not just the ones the government chose to include as exhibits in their memorandum in opposition. And also, to obtain additional other evidence that serves to further undermine the government's proffer that Mr. Rinaldo poses an insurmountable danger or risk to the community if he is released on a substantial and restrictive bond as recommended by the U.S. Pretrial Services Office.

I now have evidence that the “spin” the government has placed on the underscored portion of the following excerpt of a prison call between Mr. Rinaldo and Hector Pagan on October 26, 2011, is clearly not accurate.

Pagan: Well, no normally what they do is they give ya a little charge and then tell you you’re a menace to society, then they hit you with a superseding indictment, and then that brings you where you can’t get no bail.

Defendant: Well, they told my lawyer that. They told my lawyer that could possibly be what’s gonna happen. But, there is nothing else - you know what I mean. I didn’t even do what they’re saying I did. You know what I mean?

Pagan: No, I know that.

Defendant: It’s fucking bullshit.

Pagan: No, I know.

. . .

Defendant: But, uh, what was I gonna say? Did they talk to you a year ago like this?

Pagan: Did they yeah? Yeah.

Defendant: They did? I didn’t know that. I didn’t know that.
Alright?

Pagan: Well, no. They spoke to my attorney.

Defendant: Oh, okay. Alright, okay.

See government's memorandum in opposition at pages 4-5.

The government has argued to Your Honor that when Mr. Rinaldo asked Pagan "if they [had] talked to him a year ago like this," his tone purportedly "clearly indicated that he was upset that Pagan didn't tell him about being confronted, *which would only make sense if they committed the robbery together.*"¹ Id. at pages 6-7 (emphasis supplied). But, what I have now learned is that about a year before this conversation occurred, Hector Pagan was arrested by the government in the Eastern District on unrelated charges in United States v. Andrew Russo, et al., 11 Cr 30 (KAM). Of course, the government neglected to provide this background or context to the conversation, which makes it clear that Mr. Rinaldo simply meant what he said. Namely, that he did not know that the government had spoken the same way - in a threatening tone - to Pagan's lawyer as the government had to his then-lawyer.

The government also proffered evidence to Your Honor in their memorandum in opposition about a November 1, 2011 prison call, where Mr. Rinaldo asked his fiancé, Candice, to place money in his commissary account and she told him that money was "'tight,' and he replied, 'I thought they gave you \$1,000 the other day.'" Id. at pages 16-17. The government has argued to Your Honor that this conversation and others "when considered with the complete lack of" recent employment history "*support the notion* that the defendant profits from illegal activity and that he will try to do so if released on bail." Id. at page 17 (emphasis supplied).

¹ I have also had the time to more carefully listen to this conversation and there is no change in Mr. Rinaldo's "tone" as the government has suggested.

But, I have now had an opportunity to listen to the recorded phone conversations between Mr. Rinaldo and his fiancé which preceded November 1, 2011. Namely, the calls on October 30, 2011. During these calls, Mr. Rinaldo's fiancé, Candice, is clearly overheard explaining to Mr. Rinaldo that her family had visited that day and given her the \$1,000 in question.² For obvious reasons, the government chose to not include the October 30th calls in their memorandum in opposition to Your Honor.

Respectfully submitted,

/JRF/

James R. Froccaro, Jr.

JRF:tp

² I will have a copy of the October 30th recordings in Court should the government dispute their contents.